Mat Saat bin Ahmad & Ors v Linfox Transport Sdn Bhd & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(A)-207–03 OF 2018
KAMARDIN HASHIM, HADHARIAH SYED ISMAIL AND LEE HENG CHEONG JJCA
2 MARCH 2021

Civil Procedure — Judicial review — Appeal against — High Court dismissed appellants' application to quash award of Industrial Court — Industrial Court dismissed appellants' claims — Appeal against High Court's decision — Whether Industrial Court committed serious error of law and/or fact and acted beyond its statutory jurisdiction when it stated that date of dismissal different from that in Minister's reference — Whether Industrial Court had jurisdiction to adjudicate on complaint — Industrial Relations Act 1967 ss 20, 20(3) & 43

This was an appeal by the appellants ('applicants') against the learned High Court judge's ('HCJ') decision in dismissing the applicants' application seeking to quash the award of the Industrial Court. The applicants were the former employees of the first respondent and were employed as drivers to transport gas. The applicants were paid allowances per trip in accordance with the distance they travel outstation based on the 'manual system'. In November 2006, the manual system was changed to a computerised system. As a result of this change, a dispute arose between the applicants and the first respondent. On 4 January 2007, about 40 to 50 of the first respondent's employees, including the applicants, gathered at Shapadu Rest Area refusing to resume work. Despite several approaches by the first respondent, the employees refused to report back to work, resulting in a deadlock. When the employees continued to refuse to report for duty, the first respondent started to issue termination letters dated 8 January 2007. Thereafter, 47 employees appealed to the first respondent , and their appeals were accepted. The applicants then filed a representation under s 20 of the Industrial Relations Act 1967 to the Industrial Relations Department and their representation was referred to the Industrial Court for an adjudication by the Minister under s 20(3) of the Industrial Relations Act 1967. After a full trial, the Industrial Court had dismissed the applicants' claims. The applicants then filed an application to the High Court to quash the decision of the Industrial Court, but was similarly dismissed. Hence, this appeal. The applicants contended that: (a) the Industrial Court had committed a serious error of law and/or fact and acted beyond its statutory jurisdiction when it stated that their dismissal date was 8 January 2007 and not 4 January 2007, as stated by the Minister in the reference for adjudication before the Industrial Court; and (b) since the Industrial Court's

finding in respect of the date of their dismissal was different from that of the Minister's reference, the Industrial Court thus had no jurisdiction to adjudicate on the complaint which was not the subject matter of the Minister's reference under s 20(3) of the Industrial Relations Act 1967.

Held, dismissing the appeal with costs of RM5,000:

(1) The substance of the Minister's reference to the Industrial Court was on the issue of dismissal, whether the claimants were dismissed by the company with just cause and excuse. On the issue of the date of the dismissal, it did not go to the issue of jurisdiction as it was a finding of fact by the Industrial Court as to whether the dismissal took place on 4 January 2007 or 8 January 2007. It was not the role of the Minister to ascertain the 'correct' or 'actual' date of dismissal of the applicants as his role was limited to ascertaining whether, on the facts and materials placed before him, the representations raised serious questions of fact or of law calling for adjudication. In the event the Industrial Court found that the applicants had been dismissed on a date which was different date from the date in the Minister's reference, it did not mean that the Industrial Court was no longer seized with jurisdiction, because the Industrial Court had already acquired jurisdiction from the Minister's reference itself (see paras 27–29).

(2) Further, the applicants were involved in a strike, when they refused to report for work despite attempts made by the first respondent to persuade them to return to work. The applicants did not give any evidence on the notice as required under s 43 of the Industrial Relations Act 1967 (see para 31).

[Bahasa Malaysia summary

Ini adalah rayuan oleh perayu ('pemohon') terhadap keputusan hakim Mahkamah Tinggi ('HCJ') yang bijaksana dalam menolak permohonan pemohon yang ingin membatalkan award Mahkamah Perusahaan. Pemohon adalah bekas pekerja responden pertama dan diambil bekerja sebagai pemandu untuk mengangkut gas. Pemohon dibayar elaun setiap perjalanan sesuai dengan jarak perjalanan mereka ke luar pejabat berdasarkan 'sistem manual'. Pada bulan November 2006, sistem manual diubah menjadi sistem berkomputer. Hasil daripada perubahan ini, timbul perselisihan antara pemohon dan responden pertama. Pada 4 Januari 2007, sekitar 40 hingga 50 pekerja responden pertama, termasuk pemohon, berkumpul di Kawasan Rehat Shapadu dan enggan menyambung kerja. Walaupun terdapat beberapa pendekatan oleh responden pertama, pekerja enggan melapor kembali bekerja, mengakibatkan kebuntuan. Apabila pekerja terus enggan melapor diri bertugas, responden pertama mula mengeluarkan surat penamatan bertarikh 8 Januari 2007. Selepas itu, 47 pekerja mengemukakan rayuan kepada responden pertama, dan rayuan mereka diterima. Pemohon kemudian

memfailkan perwakilan di bawah s 20 Akta Perhubungan Perusahaan 1967 kepada Jabatan Perhubungan Perusahaan dan perwakilan mereka dirujuk ke Mahkamah Perusahaan untuk pengadilan oleh Menteri di bawah s 20(3) Akta Perhubungan Perusahaan 1967. Setelah perbicaraan penuh, Mahkamah Perusahaan telah menolak tuntutan pemohon. Pemohon kemudian memfailkan permohonan ke Mahkamah Tinggi untuk membatalkan keputusan Mahkamah Perusahaan, tetapi juga ditolak. Oleh itu, rayuan ini. Pemohon berpendapat bahawa: (a) Mahkamah Perusahaan telah melakukan kesalahan undang-undang dan/atau fakta yang serius dan bertindak di luar bidang kuasa undang-undangnya ketika menyatakan bahawa tarikh pemecatan mereka adalah 8 Januari 2007 dan bukan 4 Januari 2007, seperti yang dinyatakan oleh Menteri dalam rujukan adjudikasi di hadapan Mahkamah Perusahaan; dan (b) oleh kerana keputusan Mahkamah Perusahaan mengenai tarikh pemecatan mereka berbeza dengan rujukan Menteri, maka Mahkamah Perusahaan tidak mempunyai bidang kuasa untuk membuat keputusan atas aduan yang bukan merupakan perkara rujukan Menteri di bawah s 20(3) Akta Perhubungan Perusahaan 1967.

Diputuskan, menolak rayuan dengan kos RM5,000:

(1) Inti sari rujukan Menteri ke Mahkamah Perusahaan adalah mengenai isu pemecatan, sama ada pihak yang menuntut diberhentikan oleh syarikat dengan sebab atau alasan yang adil. Mengenai isu tarikh pemecatan, ia tidak menjejaskan isu bidang kuasa kerana ini adalah penemuan fakta oleh Mahkamah Perusahaan mengenai sama ada pemecatan itu berlaku pada 4 Januari 2007 atau 8 Januari 2007. Bukanlah tugas Menteri untuk memastikan tarikh pemecatan pemohon yang 'betul' atau 'sebenar' kerana peranannya hanya terbatas untuk memastikan sama ada, berdasarkan fakta dan material yang diletakkan di hadapannya, perwakilan tersebut menimbulkan persoalan serius atau undang-undang yang menuntut adjudikasi. Sekiranya Mahkamah Perusahaan mendapati pemohon telah diberhentikan pada tarikh yang berlainan dari tarikh dalam rujukan Menteri, itu tidak bermaksud bahawa Mahkamah Perusahaan tidak lagi mempunyai bidang kuasa, kerana Mahkamah Perusahaan telah memperoleh bidang kuasa dari rujukan Menteri itu sendiri (lihat perenggan 27–29).

(2) Selanjutnya, pemohon terlibat dalam mogok, ketika mereka menolak untuk melapor kerja walaupun ada percubaan yang dilakukan oleh responden pertama untuk meyakinkan mereka untuk kembali bekerja. Pemohon tidak memberikan keterangan mengenai notis seperti yang dikehendaki di bawah s 43 Akta Perhubungan Perusahaan 1967 (lihat perenggan 31).]

Cases referred to

Booi Kim Lee v Menteri Sumber Manusia & Anor [1999] 3 MLJ 515, HC (refd)
Council of Civil Service Unions and Others v Minister for the Civil Service [1985] AC 374, HC (refd)
Dreamland Corporation (M) Sdn Bhd v Choong Chin Sooi & Anor [1988] 1 MLJ 111, SC (distd)
Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors [2005] 2 MLJ 1; [2004] 4 CLJ 309, FC (refd)
Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeal [1996] 1 MLJ 481; [1997] 1 CLJ 665, CA (folld)
Lee Ing Chin @ Lee Teck Seng & Ors v Gan Yook Chin & Anor [2003] 2 MLJ 97; [2003] 2 CLJ 19, CA (refd)
Ming Holdings (M) Sdn Bhd v Tuan Syed Azahari bin Noh Shahabudin & Anor [2010] 4 MLJ 577; [2010] 6 CLJ 857, FC (refd)
Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd [2010] 6 MLJ 1; [2010] 8 CLJ 629, FC (refd)
Shafie bin Abd Rahman v Petroliam Nasional Berhad and Anor [2010] MLJU 1290, HC (folld)
Wong Yuen Hock v Syarikat Hong Leong Assurance Sdn Bhd and another appeal [1995] 2 MLJ 753; [1995] 3 CLJ 344, FC (folld)

Legislation referred to

Industrial Relations Act 1967 ss 20, 20(3), 33A, 43

Ramdhari JBS (Pong Loong Kean with him) (P Kuppusamy & Co) for the applicant.
Rejinder Singh (Rejinder Singh & Assoc) for the first respondent.

Lee Heng Cheong JCA:

INTRODUCTION

[1] This an appeal by the appellants/applicants' against the learned High Court judge's ('HCJ') decision dismissing the appellants/applicants' application seeking to quash the award of the Industrial Court No 422 of 2015 dated 13 April 2015.

[2] For ease of reference, parties will be referred to as they were in the proceedings before the High Court.

BACKGROUND

[3] The applicants were the former employees of the first respondent and were employed as drivers to transport gas from Malaysian Oxygen to various

places in West Malaysia. The applicants were paid allowances per trip in accordance with the distance they travel outstation based on the 'manual system'.

[4] In November 2006, the manual system was changed to a computerised system called 'LINDIZ'. As a result of this change, a dispute arose between the applicants and the first respondent .

[5] On 4 January 2007, about 40–50 of the first respondent's employees (including the applicants) gathered at Shapadu Rest Area refusing to resume work. Despite several approaches by the first respondent, the employees refused to report back to work, resulting in a deadlock.

[6] When the employees continued to refuse to report for duty, the first respondent started to issue termination letters dated 8 January 2007. The termination letter, inter alia, states as follows:

> You have categorically refused to perform work effective from 4.10.2007 despite repeated request and appeals by ... for you to commence work, however you and others still refused to commence work thus causing an enormous failure due to your action. Your concerted act of illegal gathering is also deemed as an act of illegal strike.
>
> This act of defiance by you and others is viewed very seriously by management and under the said circumstances, we have no alternative but to dismiss you with immediate effect.

[7] Thereafter, 47 employees appealed to the first respondent, and their appeals were accepted by the first respondent .

[8] The applicants then filed a representation under s 20 of the Industrial Relations Act 1967 to the Industrial Relations Department and their representation was referred to the Industrial Court for an adjudication by the Minister under s 20(3) of the Industrial Relations Act 1967.

[9] After a full trial, the Industrial Court had dismissed the applicants' claims. The applicants then filed an application to the High Court, to quash the decision of the Industrial Court, was similarly dismissed.

THE FINDINGS OF THE HIGH COURT

[10] The learned HCJ found that the only issue raised by the applicants is that they have been dismissed by the first respondent on 4 January 2007 but the Industrial Court made a finding of fact that they were not dismissed on 4 January 2007.

[11] The learned HCJ also found that the Industrial Court did not made an error in law when it decided that the date of dismissal is different from that in the Minister's reference and that the applicants' dismissal was reasonable as they were involved in an illegal strike.

[12] Further the learned HCJ found that the Minister's reference to the Industrial Court is on the issue of dismissal that is whether the applicants were dismissed by the first respondent with just cause and excuse and not on the actual date of the dismissal of the applicants.

THE LAW

[13] It is trite law that the specific finding of facts by the learned HCJ as a trier of facts should not be disturbed by an appellate court such as this court herein unless that finding was plainly wrong: see *Ming Holdings (M) Sdn Bhd v Tuan Syed Azahari bin Noh Shahabudin & Anor* [2010] 4 MLJ 577; [2010] 6 CLJ 857 (FC) paras 41–48;

[14] We were mindful of the limited role of the appellate court in relation to findings of facts made by the court of first instance. In the case of *Lee Ing Chin @ Lee Teck Seng & Ors v Gan Yook Chin & Anor* [2003] 2 MLJ 97; [2003] 2 CLJ 19 where the Court of Appeal held as follows:

> ... an appellate court will not, generally speaking, intervene unless the trial court is shown to be plainly wrong in arriving at its decision. *But appellate interference will take place in cases where there has been no or insufficient judicial appreciation of the evidence*. (Emphasis added.)

[15] Reference is also made to the decision of the Federal Court in *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1; [2004] 4 CLJ 309 where the Federal Court held that the test of 'insufficient judicial appreciation of evidence' adopted by the Court of Appeal was in relation to the process of determining whether or not the trial court had arrived at its decision or findings correctly on the basis of the relevant law and the established evidence.

[16] In *Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd* [2010] 6 MLJ 1; [2010] 8 CLJ 629, the Federal Court set out the role of the court in an application for judicial review and the correct test to be applied in reviewing the findings of fact made by the Industrial Court, to be as follows:

> [15] ... Historically, judicial review was only concerned with the decision making process where the impugned decision is flawed on the ground of procedural impropriety. However, over the years, our courts have made inroad into this field of administrative law. *Rama Chandran* is the mother of all those cases. *The Federal Court in a landmark decision has held that the decision of inferior tribunal may be*

reviewed on the grounds of 'illegality', 'irrationality' and possibly 'proportionality' which permits the courts to scrutinize the decision not only for process but also for substance. It allowed the courts to go *into the merit of the matter. Thus, the distinction between review and appeal no longer holds*.

[16] The *Rama Chandran* decision has been regarded or interpreted as giving the reviewing court a license to review without restrain decisions for substance even when the said decision is based on finding of facts. However, post *Rama Chandran* cases have applied some brakes to the courts' liberal approach in *Rama Chandran*. The Federal Court in the case of *Kumpulan Perangsang Selangor Bhd v Zaid bin Hj Mohd Noh* [1997] 1 MLJ 789; [1997] 2 CLJ 11 after affirming the *Rama Chandran* decision held that there may be cases in which for reason of public policy, national interest, public safety or national security the principle in *Rama Chandran* may be wholly inappropriate.

[17] The Federal Court, in *Petroliam Nasional Bhd v Nik Ramli Nik Hassan* [2004] 2 MLJ 288; [2003] 4 CLJ 625, again held that the reviewing court may scrutinise a decision on its merits but only in the most appropriate of cases and not every case is amenable to the *Rama Chandran* approach. Further, *it was held that a reviewing judge ought not to disturb findings of the Industrial Court unless they were grounded on illegality or plain irrationality, even where the reviewing judge might not have come to the same conclusion*.

[18] The Court of Appeal has in a number of cases held that where finding of facts by the Industrial Court are based on the credibility of witnesses, those findings should not be reviewed (see *William Jacks & Co (M) Sdn Bhd v S Balasingam* [2000] 7 MLJ 1; [1997] 3 CLJ 235; *National Union of Plantations Workers v Kumpulan Jerai Sdn Bhd, Rengam* [2000] 2 MLJ 144; [2001) 1 CLJ 681; *Quah Swee Khoon v Sime Darby Bhd* [2000] 2 MLJ 600; [2001] 1 CLJ 9; *Colgate Palmolive (M) Sdn Bhd v Yap Kok Foong and another appeal* [2001] 4 MLJ 97; [2001] 3 CLJ 9. However, there are exceptions to this restrictive principle where:

(a) reliance upon an erroneous factual conclusion may itself offend against the principle of legality and rationality, or

(b) there is no evidence to support the conclusion reached (see *Swedish Motor Assemblies Sdn Bhd v Haji Mohd Ison bin Baba* [1998] 2 MLJ 372; [1998] 3 CLJ 288).

[19] It is clear from the above authorities that the scope and ambit of *Rama Chandran* had been clearly explained and clarified. *Decided cases cited above have also clearly established that where the facts do not support the conclusion arrived at by the Industrial Court, or where the findings of the Industrial Court had been arrived at by taking into consideration irrelevant matters, and had failed to consider relevant matters into consideration, such findings are always amendable to judicial review*. (Emphasis added.)

[17] In *Booi Kim Lee v Menteri Sumber Manusia & Anor* [1999] 3 MLJ 515, Justice KC Vohrah adopted Lord Diplock's classification of grounds of judicial review in the case of *Council of Civil Service Unions and Others v Minister for the Civil Service* [1985] AC 374 where Lord Diplock speaking for the House of

Lords, said that the three grounds are illegality, irrationality and procedural impropriety.

FINDINGS OF THIS COURT

[18] Bearing in mind the above principles, we will now deal with the applicants' appeal.

[19] The applicants contended that the Industrial Court has committed a serious error of law and/or fact and acted beyond its statutory jurisdiction when it stated that their dismissal date is 8 January 2007 and not 4 January 2007, as stated by the Minister in the reference for adjudication before the Industrial Court.

[20] The applicants contended that since the Industrial Court's finding in respect of the date of their dismissal is different from that of the Minister's reference, the Industrial Court thus has no jurisdiction to adjudicate on the complaint which is not the subject matter of the Minister's reference under s 20(3) of the Industrial Relations Act 1967, relying on the case *Dreamland Corporation (M) Sdn Bhd v Choong Chin Sooi & Anor* [1988] 1 MLJ 111.

[21] The pertinent portion of the judgment of *Dreamland Corporation* case that was relied by the applicants reads as follows:

> ... However neither that court nor the High Court were correct in amending the date of dismissal and in awarding compensation as a consequence of such amended date, both matters outside their jurisdiction in an enquiry under s 20(3) of the Industrial Relations Act.

[22] The issue in *Dreamland Corporation* case can be distinguished from the instant appeal. In *Dreamland Corporation* case, the Industrial Court heard the witnesses and granted the following award:

> (1) I find that there is evidence that the claimant had talked about the low salaries and low increment to the staff in the Company, and this to my mind brings about a bad effect among the staff concerned, so I uphold the dismissal of the claimant by the company.
>
> (2) The claimant had committed a misconduct and before such dismissal took effect the company did not hold any inquiry at all. Though I uphold the order of dismissal of the claimant *the effective date of such dismissal takes effect on the last date of the hearing*; therefore, the claimant is entitled to back wages from the date of dismissal 23 February 1984 till 28 April 1986, ie, 26 months and four days at the rate of RM2,400 a month ... RM62,720.

(3) The company is to pay this sum within one month from the date of this award after tax clearance. (Emphasis added.)

[23] The above award was referred under s 33A of the Industrial Relations Act 1967 to the High Court on the following two questions of law:

(a) does the Industrial Court have jurisdiction to award compensation to a workman whose dismissal has been upheld by the court; and

(b) does the Industrial Court have jurisdiction to amend the date of dismissal of the workman so that the workman is deemed to be in employment until the date of the award and thereby become entitled to back wages?

[24] The Supreme Court in *Dreamland Corporation* case in answering the second question of law above, held that the Industrial Court and the High Court which affirmed the decision of the Industrial Court, have no jurisdiction to amend the date of dismissal of the employee by the employer on 23 February 1984 to the last date of the hearing in the Industrial Court, ie 28 April 1986. The actual date of dismissal cannot be amended to any other date in order to grant the employee back wages.

[25] Thus in the *Dreamland Corporation* case, the issue of the date in the second question of law referred to the High Court, is whether the Industrial Court can change the actual date of dismissal to another date, and in that case, to the last date of hearing before the Industrial Court. The Supreme Court held that both the Industrial Court and the High Court have no jurisdiction to change the date of dismissal and thereafter deemed that the employee is still in the employment during the extended period.

[26] We are in agreement with the learned HCJ that the pertinent case to consider is *Shafie bin Abd Rahman v Petroliam Nasional Berhad and Anor* [2010] MLJU 1290 where Aziah Ali J (as she then was) held as follows:

> [8] It is the Ministerial reference and not the statement of case that determines the Industrial Court's Jurisdiction. In the present case, what is the dispute referred by the Minister to the Industrial Court? *The subject matter of reference as reflected in the award is the dismissal of the applicant by the first respondent. That is the dispute referred to the Industrial Court for adjudication and it is clearly within the scope of the Industrial Court's jurisdiction. The date of dismissal is a matter for determination by the Industrial Court.*
>
> [9] The applicant herein claims constructive dismissal. Hence the issues before the Industrial Court are amongst others:
>
> (a) whether there was constructive dismissal; and

A (b) if there was constructive dismissal, whether the date of dismissal is 29 September 2005 as stated in the Ministerial reference or 30 September 2005 as stated in the statement of case. (Emphasis added.)

B **[27]** In the instant appeal, we are of the respectful view that the substance of the Minister's reference to the Industrial Court is on the issue of dismissal, whether the claimants were dismissed by the company with just cause and excuse.

C **[28]** On the issue of the date of the dismissal, we hold that the same does not go to the issue of jurisdiction as it is a finding of fact by the Industrial Court as to whether the dismissal took place on 4 January 2007 or 8 January 2007. The applicants took the position that they have been dismissed on 4 January 2007. They then made their complaint to the Minister, and the Minister referred D their complaints to the Industrial Court for adjudication. It is not the role of the Minister to ascertain the 'correct' or 'actual' date of dismissal of the applicants as his role is limited to ascertaining whether, on the facts and materials placed before him, the representations raised serious questions of fact or of law calling for adjudication. We find guidance in *Hong Leong Equipment* E *Sdn Bhd v Liew Fook Chuan and another appeal* [1996] 1 MLJ 481; [1997] 1 CLJ 665, where the Court of Appeal held as follows:

> To summarise, when a question arises as to whether the Minister has correctly exercised his discretion under s 20(3) of the Act, it is the solemn duty of a court to undertake a meticulous examination of the facts that were made available to the F Minister. If the examination reveals that the representations made under s 20(1) are neither perverse, frivolous nor vexatious, a decision not to refer is liable to be quashed by an order of certiorari.
>
> *It follows from these decisions that the Minister must bear in the forefront of his mind that the Act has established a special tribunal to adjudicate upon a dispute arising from* G *representations made under* s 20(1) *of the Act and that it is therefore no part of his function to arrive at a concluded view upon the merits of the dispute. His role is limited to ascertaining whether, on the facts and materials placed before him, the representations raised serious questions of fact or of law calling for adjudication.*
>
> And, as I have already said, his determination upon the question one way or the H other is not conclusive ... (Emphasis added.)

[29] After the Minister's reference to the Industrial Court is on the issue of dismissal, that is whether the claimants were dismissed by the company with just cause and excuse, it is for the Industrial Court to ascertain the date of the I dismissal of the applicants after hearing all the evidence. In the event the Industrial Court finds that the applicants have been dismissed on a date which is different date from the date in the Minister's reference, it does not mean that the Industrial Court is no longer seized with jurisdiction, because the Industrial Court has already acquired jurisdiction from the Minister's reference itself. The

reference is on the applicants' complaints which is, their dismissal and not on the date of dismissal. It is clearly illogical if the Industrial Court suddenly finds itself lacking in jurisdiction after scrutinising through the evidence and makes a finding that the date of dismissal is different from the date stated in the ministerial reference.

[30] We find support in *Wong Yuen Hock v Syarikat Hong Leong Assurance Sdn Bhd and another appeal* [1995] 2 MLJ 753; [1995] 3 CLJ 344, where the Federal Court held as follows:

> [2] *Once a case of wrongful dismissal has been properly. referred by the Minister under* s 20(3), *the Industrial Court is seized with jurisdiction and is obliged under the Act to determine the dispute on merits, unless the reference itself is void ab initio.* The Industrial Court has no jurisdiction to change the scope of such reference ... (Emphasis added.)

[31] Further, it is not in dispute that the applicants were involved in a strike, when they refused to report for work despite attempts made by the first respondent to persuade them to return to work. Section 43 of the Industrial Relations Act 1967 states that the restrictions on strike, which, inter alia, requires notice to be given to the company/employer. In this case, the applicants did not give any evidence on the notice as required under s 43.

CONCLUSION

[32] Premised on the reasons enumerated above, we find that there are no merits in the appeal. The appeal is hereby dismissed with cost of RM5,000 subject to payment of allocatur and the decision of the High Court is affirmed.

Appeal dismissed with costs of RM5,000.

Reported by Nabilah Syahida Abdullah Salleh